

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LISA GARVEY, individually and on
behalf of others similarly situated,

Plaintiff,

v.

KMART CORPORATION,

Defendant.

No. C 11-02575 WHA

**ORDER REGARDING
RULE 60 MOTION**

With respect to the pending motion for relief under Rule 60, the Court is concerned that Kmart withheld schematic diagrams and other documents relating to the S2007, S940, and S950 checkout configurations despite at least two document requests calling for such materials. Kmart's opposition to the motion fails to explain why these materials were not timely produced. By **JUNE 4 AT NOON** Kmart shall file sworn declarations by persons with actual knowledge (1) explaining and tracing, step-by-step, how Kmart and its counsel conducted the search for such diagrams and related materials; (2) the extent to which anyone at Kmart was aware of documents relating to the S2007, S940, and S950 configurations; and (3) specifically why those documents were not timely produced. Please further explain in those declarations the extent to which any attorney or paralegal at Winston & Strawn or Paul Hastings was aware of those schematics and/or related materials prior to the close of the trial.


Before the hearing on June 6, the Court expects plaintiff's counsel to conduct three-hour depositions of Jesse Gonzalez and Greg Ebert concerning the extent to which they were aware of these other configurations prior to their trial testimony, when they first became aware of these

1 configurations, and statements regarding their trial testimony in the declarations they submitted
2 with Kmart's opposition to the Rule 60 motion (Dkt. Nos. 329-30). The Court further expects
3 defendant's counsel to make these witnesses available. This supersedes any vacation plans or
4 business appointments absent a further Court order.

5 We will discuss at the hearing on June 6 the extent to which an evidentiary hearing into
6 this matter will be held.

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8 **IT IS SO ORDERED.**

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10 Dated: May 28, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE